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Written Testimony of

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Subcommittee on

Financial Institutions and Consumer Protection

Back to School: Shedding Light on Risks and Harm in the Private Student Lending and Servicing Market

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Witness Background Statement

Dalié Jiménez is a Professor of Law at the University of California Irvine School of Law. She co-directs the UC Student Loan Law Initiative, an academic center focused on student debt and the law.[1]

She teaches and writes about debt, student loans, consumer law, bankruptcy, and access to justice. She is a co-principal investigator at the Debt Collection Lab and the Financial Distress Research Project.[2]

Professor Jiménez is an elected member of the American Law Institute, a fellow of the American College of Consumer Financial Services Lawyers and the American Bar Foundation, and a member of the American Bankruptcy Institute's Commission on Consumer Bankruptcy. She spent a year as founding staff at the Consumer Financial Protection Bureau working on debt collection, debt relief, credit reporting, and student loan issues.

Prior to her academic career, Jiménez clerked for the Honorable Juan R. Torruella of the United States Court of Appeals for the First Circuit, was a litigation associate at Ropes & Gray in Boston, and managed consumer protection issues for a Massachusetts state senator.

Born in Cuba, Jiménez emigrated to the US as a teenager. She is a *cum laude* graduate of Harvard Law School and holds dual B.S. degrees in electrical engineering/computer science and political science from the Massachusetts Institute of Technology.

[1] UC Student Loan Law Initiative, https://slli.org.
[2] Debt Collection Lab, https://debtcollectionlab.org; Financial Distress Research Project, https://a2jlab.org/financial-distress/.

Chairman Warnock, Ranking Member Tillis and members of the Subcommittee:

Thank you for the opportunity to speak to you today.

My name is Dalié Jiménez. I am a tenured professor at the University of California, Irvine School of Law, where I teach courses in consumer financial protection, contracts, bankruptcy, and secured credit.

At UCI, I co-lead the Student Loan Law Initiative, a project aimed at spurring more academic research on the issue of student debt.[3] I am also a co-principal investigator with the Princeton Debt Collection Lab, an interdisciplinary research initiative focused on studying and addressing issues related to debt collection in the United States.[4]

The views I express here are my own, however.

I'm grateful that this subcommittee is shining a light on this rapidly growing industry and financial products. In 2012, the CFPB issued the first and only comprehensive report on the private student loan industry, finding that after an explosion in the run up to the financial crisis of 2008, the industry had precipitously declined.[5] Today, it appears it be roaring back and reinventing itself, with some calling for the federal government to give it an even bigger push into growth.

I am here to tell you about some of the issues I am seeing and hearing about in the industry as it stands now, and to sound a note of **caution and a call for deeper investigation** into this industry, particularly the newer products.

The bottom line of my testimony is a plea that the Consumer Financial Protection Bureau (CFPB) take a more hands on approach to private student loans. As I will detail here, at least some issuers, buyers, and servicers of private educational debt are engaging in unfair, deceptive, and abusive practices that must be stopped. My testimony covers a great deal of ground, so I'll begin with some highlights:

(1) Today's private student loan market includes many more financial products than twelve years ago. These new products bring added risks that we are only beginning to understand. **To better understand the risks and harms in this market, the CFPB should create a registry of financial services firms and issue 1022(c)(4) orders to the largest providers of "traditional" and "shadow" student debt.**

(2) When borrowers can't repay their student loans, they often end up in bankruptcy or sued in state court. These systems are opaque and full of traps for debtors. I will detail several instances of apparent violations of consumer protection laws.

[3] UC Student Loan Law Initiative, https://slli.org.

[4] Debt Collection Lab, https://debtcollectionlab.org/about-us.

[5] Consumer Financial Protection Bureau, Private Student Loans: https://www.consumerfinance.gov/data-research/research-reports/private-student-loans-report/ (Aug. 29, 2012).

The CFBP should proactively investigate these issues by studying court record microdata about bankruptcy and debt collection lawsuits.

I. Debts Owed to Institutions of Higher Education (IHE)

Institutions of higher education (IHE)—that is colleges, universities, technical schools, and others offering postsecondary instruction—offer students a variety of financial products that can fit under the umbrella of private student loan. They can take the form of loan from the IHE to the student, a "tuition repayment plan," an income share agreement, or a debt the student is billed for after goods or services have been provided. This is an opaque market, but one that appears to be on the rise. These products pose several consumer risks, ranging from the potential of misunderstanding/misleading representations, and imposing severe consequences such as withholding transcripts.

A. Tuition Payment Plans

IHEs that are eligible for Title IV funds (federal student aid) also tend to offer "tuition payment plans," products typically styled short-term loans without upfront interest, but which have enrollment and other fees. These loans lack protections available to federal student loans, and students may be misled by the information they are given. For example, many schools state that their tuition plans are "not a loan" and that students will have "no debt".[6] This is misleading because although they may not charge interest, all have enrollment and other fees such as late fees and returned payment fees.[7] In the case of Title IV-eligible institutions, these loans may also be difficult to discharge in bankruptcy.[8]

In 2023, the CFPB surveyed tuition payment plans at hundreds of Title IV schools characterizing many of them as being "in fact private student loans under [the Truth In Lending Act (TILA)]," although many of them seemingly lacked appropriate disclosures.[9] Over two-thirds of institutions using these products do so through a service provider.[10]

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[6] SUNY Delhi, Payment Plan, https://www.delhi.edu/mydelhi-students/student-accounts/payment-plan/index.php [perma.cc/UK4W-BQGJ]; Northeastern University, Payment Methods, Student Financial Services, https://studentfinance.northeastern.edu/billing-payments/payment-methods/ [https://perma.cc/AD24-APB2]; Georgia Southwestern State University, NELNET Payment Plan, https://www.gsw.edu/student-account/nelnet-payment-plan.html [perma.cc/EX9N-ZGCK]; City College of San Francisco, Nelnet Payment Plan, https://ccsfkb.blackbelthelp.com/it/nelnet-payment-plan/ [perma.cc/LG6G-LULW].

[7] Consumer Financial Protection Bureau, *Tuition Payment Plans in Higher Education* 12 (2023), https://www.consumerfinance.gov/data-research/research-reports/tuition-payment-plans-in-higher-education/ [hereafter *Tuition Payment Plans*].

[8] In re Chambers, 348 F.3d 650, 657 (7th Cir. 2003) (holding that "nonpayment of tuition qualifies as a loan … where 'there is an agreement ... whereby the college extends credit'" for purposes of bankruptcy law).

[9] "… many tuition payment plans are in fact private student loans under TILA, generally as non-Title IV loans issued for postsecondary educational expenses to a borrower ... See 15 U.S.C. 1650(a)(8)." *Tuition Repayment Plans*, *supra* note 11 at 17n64.

[10] *Tuition Repayment Plans*, *supra* note 11 at 7-8. The CFPB found that while 36% of schools surveyed did not list a provider, several providers market a "white label" product that is branded by the institution and not disclosed to the student. *Id.*

The rest use a handful of private providers on a licensing basis or revenue-sharing basis: Nelnet, Transact, and TouchNet were the most popular.[11] This is a lucrative business.[12]

While they could be convenient for some students, these loans can be expensive, and the disclosures surrounding them may lead students to misunderstand the costs. The CFPB estimated that even with tuition products that did not charge interest up front, a student who borrowed $525 to be paid in four installments could incur between $69.44 to $399.44 in fees if the had trouble repaying the loan.[13] If a student fails to repay the loan as agreed, they may be surprised to learn that the school may accelerate the loan and charge interest on the balance.[14]

Students may also be forced to use or automatically enrolled in these programs because of delays in receiving aid or grants.[15] Unfortunately, many students are experiencing unprecedented delays this academic year due to issues with the FAFSA rollout and this will likely increase the use of these products.[16] In addition, students who would prefer not to take out student loans may forgo federal loans in favor of tuition repayment plans, despite limited protections offered by these products.[17]

When tuition repayment plans fail—or when students incur other debts to their institution like a library fine, parking ticket, or the obligation to return a Pell Grant—and they cannot repay, the consequences can mount quickly.[18] In 2022, I coauthored a report sounding the alarm on the rise of these kinds of debts in California.[19] My coauthors and I estimated that students attending California public institutions had been saddled with

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[11] *Id.* at 7.

[12] "Nelnet Campus Commerce provides service for over 1,000 colleges and universities worldwide and serves over 8 million students and families. Nelnet Campus Commerce generated $129 million and $113 million in revenue for the years ended December 31, 2023 and 2022, respectively." Nelnet, *10-K Annual Report* at 8 (Feb. 2024), https://d18rn0p25nwr6d.cloudfront.net/CIK-0001258602/557a6a8e-e4fb-4760-b2e0-e121be953767.pdf. "Due to an increase in interest rates, the Company recognized $27.0 million in interest income on tuition funds held in custody for schools, an increase from $9.4 million in 2022." *Id.* at 43.

[13] *Tuition Repayment Plans*, *supra* note 11 at 25.

[14] *Id.* at 15.

[15] *Id.* at 20-22. *See e.g.,* Bursar, Oklahoma City Community College, https://www.occc.edu/bursar/ [perma.cc/22XU-S7XC].

[16] Jack Stripling, *What the FAFSA Just Happened?*, The Chronicle of Higher Education (Sept. 10, 2024), https://www.chronicle.com/podcast/college-matters-from-the-chronicle/what-the-fafsa-just-happened?sra=true; National Association of Independent Colleges and Universities, *Summary: Member Survey on FAFSA Delay Reveals Broad, Substantial Impact* (2024), https://www.naicu.edu/media/5t0n1awq/2024-fafsa-survey-summary.pdf.

[17] *See* Kate Sablosky Elengold, Jess Dorrance, Amanda Martinez, Patricia Foxen, and Paul Mihas, *Dreams Interrupted: A Mixed Methods Research Project Exploring Latino College Completion* (Sept. 9, 2021), https://unidosus.org/publications/dreams-interrupted-a-mixed-methods-study-assessing-latino-college-completion (investigating the issue of "debt aversion" in the Latino community and finding that "debt aversion is a reaction to America's system of debt-financed higher education … it is a reaction to debt-financed higher education set in the context of failed borrowing systems throughout our economy and the uncertainty and discrimination in the labor market").

[18] Charlie Eaton, Johnathan Glater, Laura Hamilton, and Dalié Jiménez, *Creditor Colleges: Canceling Debts that Surged during COVID-19 for Low-Income Students* (Apr. 1, 2022), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4072193.

[19] The report covered both tuition payment plans and debts that schools charge students. These include things as varied as library or parking fines as well as charges for Pell grant moneys the school returned to the Department of Education. *Id.*

$390 million in institutional debts between 2020 and 2022.[20] Outside of regular collection methods, public colleges and universities have extraordinary tools such as tax refund offsets to collect on these debts.[21] These offsets may take away funds from child and poverty tax credits, harming borrowers. This is particularly harmful for students whose debts stem from having to return Title IV funds (Pell Grants primarily) because of dropping out or getting a failing grade in a class.

Schools also take other punitive measures when students cannot repay their debts. These can be counterproductive, such as when the school prohibits the student from re-enrolling for a relatively small debt. Withholding transcripts was also a very popular method of attempting to achieve collection. As the CFPB has stated, this "is designed to gain leverage over borrowers and coerce them into making payments, as it is difficult to seek employment or transfer education credits to another school without an official transcript."[22] At least a dozen states (including New York, California, Colorado, and Virginia) ban transcript withholding through statute,[23] and both the CFPB and the Department of Education have banned it in some circumstances.[24] Nonetheless, many schools continue to state on their websites that they will withhold student's transcripts for failure to pay their school debts.[25] While we cannot know whether they *actually* do so in violation of their state's laws and regulations, stating this information on their website is misleading to students who might be making difficult choices about which debts to repay during a period of economic distress.

B. "Shadow" Student Debt and Vague Educational Programs

Some IHEs offer other loan products which they term "deferred tuition" and sometimes called "learn now, pay later" plans. Although they sound like the "buy now, pay later" short term credit products, these education credit products are structured as longer-

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[20] *Id.*

[21] *Id.* at 15. In California, private educational institutions are also currently using the state tax refund offset program to collect on their own private debts. *See* Cal. Govt. Code § 12419.9 and information on file with the author.

[22] CFPB Supervisory Examinations Find Violations of Federal Law by Student Loan Servicers and University-Owned Lenders (Sept. 29, 2022), https://www.consumerfinance.gov/about-us/newsroom/cfpb-supervisory-examinations-find-violations-of-federal-law-by-student-loan-servicers-and-university-owned-lenders/ (stating that "policies to withhold transcripts can run afoul of the law").

[23] Matthew Arrojas, Here Are the States That Ban Colleges From Withholding Transcripts, Best Colleges (updated May 8, 2024), https://www.bestcolleges.com/news/2022/05/19/states-that-ban-college-transcript-withholding-student-debt/.

[24] *Id.*; 34 CFR Part 668.

[25] California Stanislaus State, https://www.csustan.edu/tuition-fees/faqs ("your account will be placed on hold so you cannot register for additional classes, *receive transcripts* … until your account is paid.")(emphasis added); Canton State University of New York, https://www.canton.edu/registrar/transcripts.html ("All financial obligations to the College must be cleared prior to release of a transcript."); Minnesota State University Moorhead, Payment Dates, https://www.mnstate.edu/cost-aid/tuition-fees/payment-dates/ ("The University is authorized to withhold the issuance of diplomas and official transcripts and deny further registration. Holds will remain on a student's account until their account balance is paid in full.") (describing this rule is in effect at least till Feb. 18, 2025). Post University, Tuition Payments, https://post.edu/payments/ ("An account that is not current will result in denial of registration for courses, withholding of transcripts and degrees, and/or assessment of interest equal to 1.5% monthly of the balance due, equal to 18% annually of the balance due.") *See also* Loyola University of Chicago, Policy For Obtaining a Transcript or Diploma Withheld Because of a Financial Hold (Aug. 1, 2024), https://www.luc.edu/bursar/policyforobtainingatranscriptordiplomawithheld/ (detailing specific circumstances in which the university will release transcripts when there's a financial hold).

term interest-bearing loans with interest rates in the double digits[26] or as income share agreements (ISA).[27] The risks with these loans are higher because of the types of schools that offer them.

These types of loans are more common among vocational or "boot camp" style IHEs that make lofty promises to "change your life" even when students have "little to no coding experience."[28] These boot camps promise students refunds if they don't get a job within a year, but the fine print makes that promise all but unusable.[29] The CFPB has already acted against several ISA providers for misleading disclosures, and reformed ISA contracts as well as returned funds to students.[30] The Department of Education made it clear that ISAs were loans and subject to disclosures and the prohibition against prepayment penalties.[31]

Some of the IHEs are straddling the line between "education" and career coaching/mentorship. Pathrise for example, promises to "optimize your search and advance your career" over a dozen areas like software engineering, data, marketing, and sales.[32] The product seems to involve "live workshops" and "1-on-1's" with mentors.[33] It refers to their users as "fellows" and boasts "proven outcomes" guiding "2,600 fellows every step of the way to land their dream jobs and earn industry-leading salaries."[34] Users of this service are directed to finance it through an income share loan of undisclosed terms.[35] A recent lawsuit against Pathrise and its servicers, Leif Technologies, Inc. and Leif Servicing, LLC, alleges violations of several California statutes, including operating an "unlawful, unbonded employment agency," or in the alternative "an educational program" and issuing unlawful income share agreements.[36] A similar

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[26] App Academy, https://www.appacademy.io/tuition (describing APR ranges from 9.79% - 21%); Bloom Institute of Technology Deferred Tuition, https://www.bloomtech.com/tuition/deferred-tuition [https://perma.cc/F7PG-CXKX] (APRs from 8.45% to 18.95% for what is essentially an income share agreement).

[27] Pathrise ISA, https://www.pathrise.com/isa [perma.cc/F37P-9TAN].

[28] "Change your career, change your life. Our software engineering bootcamps are designed to help people with little to no coding experience become high-earning software engineers." App Academy, https://www.appacademy.io/ [https://perma.cc/743E-QX8W] (last visited Sept. 14, 2024).

[29] https://www.careerist.com/legal/cancellation-policy [perma.cc/TF8Z-AL27].

[30] CFPB Takes Action Against Coding Boot Camp BloomTech and CEO Austen Allred for Deceiving Students and Hiding Loan Costs (Apr. 17, 2024), https://www.consumerfinance.gov/about-us/newsroom/cfpb-takes-action-against-coding-boot-camp-bloomtech-and-ceo-austen-allred-for-deceiving-students-and-hiding-loan-costs/; CFPB and 11 States Order Prehired to Provide Students More than $30 Million in Relief for Illegal Student Lending Practices (Nov. 20, 2023), https://www.consumerfinance.gov/about-us/newsroom/cfpb-and-11-states-order-prehired-to-provide-students-more-than-30-million-in-relief-for-illegal-student-lending-practices/; CFPB Takes Action Against Student Lender for Misleading Borrowers about Income Share Agreements (Sept. 7, 2021), https://www.consumerfinance.gov/about-us/newsroom/cfpb-takes-action-against-student-lender-for-misleading-borrowers-about-income-share-agreements/.

[31] U.S. Department of Education, What Colleges Should Know About Income Share Agreements and Private Education Loan Requirements (March 2022), https://blog.ed.gov/2022/03/what-colleges-should-know-about-income-share-agreements-and-private-education-loan-requirements/.

[32] https://www.pathrise.com/.

[33] Pathrise Frequently Asked Questions, https://www.pathrise.com/help [https://perma.cc/DF2P-UBD3].

[34] Pathrise Outcomes, https://www.pathrise.com/outcomes [

[35] Pathrise ISA, https://www.pathrise.com/isa [perma.cc/F37P-9TAN].

[36] The California Education Code defines "educational program" as "a planned sequence composed of a set of related courses or modules . . . that provides education, training, skills, or experience, or a combination of these . . . ." Cal. Ed. Code § 94837. The complaint argues that Pathrise also meet the California definition of a "private postsecondary institution" per Cal. Ed. Code § 94858. First Amended Complaint, *supra* note 33, at 18.

lawsuit was filed against Careerist, a company that boasts students will "Earn a tech salary up to $113K, no coding experience" in 6 months.[37]

These shadow debts can have disastrous consequences for students.[38] The costs are exorbitant, and they appear to have dubious value. While we do not have much data on who enrolls in these programs, it is all but certain that they are disproportionally used by and targeted to women and minorities.[39] They are likely also more likely to be used by those who began college but did not complete, a group that is disproportionally black, brown, and female, and has many negative outcomes.[40]

# # #

To bring much needed sunshine to these issues, the CFPB should:

1. **Issue orders pursuant to section 1022(c)(4) of the Dodd Frank to collect information from traditional private student loan providers as well as "shadow student debt" companies,[41] and**
2. **Create a federal registry of nonbank financial services firms.[42]**

II. Shining a Light on Abuses in the Courts

I want to talk about issues I am seeing in my research studying court dockets across the country. What I provide below are just examples of cases and issues I think the CFPB should investigate further. But more broadly, I want to make a case for why the Bureau and other regulatory agencies should be systematically examining court dockets to learn about emerging issues. Closely reviewing court documents was how a legal aid attorney discovered robo-signing irregularities across the country, leading to the national mortgage settlement.[43] As I hope the following shows, court dockets can be an additional early warning system for the CFPB and consumer finance regulators. While there is

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[37] Careerist, Start your Career in Tech, https://www.careerist.com/ [https://perma.cc/EDZ5-LX53]. The complaint alleges similar counts to the Pathrise complaint. Pasoon v. Careerist, Complaint (Jan. 15, 2024), https://perma.cc/3DAR-EU56.

[38] Student Borrower Protection Center, *Shadow Student Debt* 31-32 (July 2020), https://protectborrowers.org/wp-content/uploads/2020/12/Shadow-Student-Debt.pdf.

[39] Dalié Jiménez and Jonathan D. Glater, *Student Debt is a Civil Rights Issue: The Case for Debt Relief and Higher Education Reform*, 55 Harv. Civ. R. & Civ. Lib. L. J. 131 (2020), *available at* https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3475224.

[40] National Student Clearinghouse Rsch. Ctr., *Some College, No Credential* (Jul. 2022), https://nscresearchcenter.org/some-college-no-credential/.

[41] These orders should include at least some of the largest public systems in the country. The last time the CFPB produced a detailed report on these issues was in 2012, as part of a request for information issued before the Bureau was an official agency. Consumer Financial Protection Bureau, "Private Student Loans Report," September 2012, https://www.consumerfinance.gov/data-research/research-reports/private-student-loans-report/. *See also* CFPB Orders Tech Giants to Turn Over Information on their Payment System Plans (Oct. 21, 2021), https://www.consumerfinance.gov/about-us/newsroom/cfpb-orders-tech-giants-to-turn-over-information-on-their-payment-system-plans/.

[42] *Shadow Student Debt*, *supra* note 38at 35.

[43] David Streitfeld, *From a Maine House, a National Foreclosure Freeze*, NEW YORK TIMES (Oct. 15, 2010), https://www.nytimes.com/2010/10/15/business/15maine.html; What was the National Mortgage Settlement?, https://www.consumerfinance.gov/ask-cfpb/what-was-the-national-mortgage-settlement-en-2071/.

much to be done to improve access to state[44] and federal court data,[45] this is a tool they could use right now.

In 2020, professors Alexandra Sickler and Kara Bruce made the case that the CFPB "should adopt a more purposeful bankruptcy-directed regulatory agenda."[46] They suggested that the CFPB use its information-gathering tools such as the consumer complaint database and issue a Requests for Information to the public about consumer protection issues in bankruptcy (in coordination with the United States Trustee).[47] The 2022 Consumer Bankruptcy Reform Act proposed establishing a "Consumer Bankruptcy Ombuds," something that would go a long way.[48]

I am in wholehearted agreement with Sickler and Bruce, but want to also encourage the Bureau to think bigger.

A. Bankruptcy

Like other private companies that operate in the consumer credit markets, private student lenders issue loans to borrowers they deem creditworthy, at interest rates they set, and with requirements they control (such as having a co-signer). Nonetheless, since 2005 they have also enjoyed a level of protection in bankruptcy not afforded to most private creditors. I have written elsewhere about how this protection is unwarranted and should be eliminated, but today I want to talk about issues with private student lenders and servicers in bankruptcy.[49]

1. Private Student Loan Lender Settling Claims that Might Have Already Been Discharged Forcing Debtors to Waive the Possibility of a Future Discharge

Earlier this year, the CFPB sued the Pennsylvania Higher Education Assistance Agency (PHEAA) for trying to collect debts from consumers even though they had been discharged in bankruptcy.[50] The issue concerns the definition of loans that enjoy

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[44] Erika Rickard, *How Organizing, Sharing Data Can Boost Court Transparency*, Pew Charitable Trusts (Sept. 27, 2023), https://www.pewtrusts.org/en/research-and-analysis/fact-sheets/2023/09/how-organizing-sharing-data-can-boost-court-transparency.

[45] Brian Carver, *What Should be Done About the PACER Problem?*, Free Law Project (March 24, 2015), https://free.law/2015/03/24/what-should-be-done-about-the-pacer-problem.

[46] Alexandra Sickler & Kara Bruce, *Bankruptcy's Adjunct Regulator*, 72 Fla. L. Rev. 159 (2020). *See also* Alexandra P. E. Sickler, *Big Banks & Small Consequences in Chapter 13 Essay*, 39 EMORY BANKR. DEV. J. 559 (2023).

[47] *Id.* at 207-09.

[48] Consumer Bankruptcy Reform Act of 2022, S. 4980, § 201(a), 117th Cong. (2022). *See also* Alexandra P. E. Sickler, *Big Banks & Small Consequences in Chapter 13 Essay*, 39 EMORY BANKR. DEV. J. 559 (2023) (discussing the possibilities of such an office).

[49] Testimony of Dalié Jiménez before the Subcommittee on Antitrust, Commercial, and Administrative Law of the House Committee on the Judiciary (Jun. 25, 2019), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3005975 (citing Alexei Alexandrov & Dalié Jiménez, *Lessons from Bankruptcy Reform in the Private Student Loan Market*, 11 HARV. L. & POL'Y REV. 175, 179 (2017) and Xiaoling Ang & Dalié Jiménez, *Private Student Loans and Bankruptcy: Did Four-Year Undergraduates Benefit from the Increased Collectability of Student Loans?*, in STUDENT LOANS AND THE DYNAMICS OF DEBT 211 (2015).

[50] CFPB Sues Student Loan Servicer PHEAA for Pursuing Borrowers for Loans Discharged in Bankruptcy (May 31, 2024), https://www.consumerfinance.gov/about-us/newsroom/cfpb-sues-student-loan-servicer-pheaa-for-pursuing-borrowers-for-loans-discharged-in-bankruptcy/.

presumptive nondischargeability in bankruptcy.[51] While the common refrain is that "student loans are not dischargeable in bankruptcy," that phrase is wrong in two respects. First, the word "student loans" does not appear in the Bankruptcy Code. The statute refers to "education benefit overpayment," "educational … loan", and "obligation to repay funds received as an educational benefit, scholarship, or stipend."[52] As the CFPB noted in the action against PHEAA, loans incurred "to pay for tuition at schools that do not qualify for federal Title IV funding, such as unaccredited trade or K-12 schools, loans for medical and dental residency, loans to students attending school less than half-time."[53] In addition, they noted that loans provided directly to consumers (bypassing the school's financial aid office) can fit in this category if they were made in excess of the cost of attendance.[54]

For the past year, I've been working on a study examining the effectiveness of the Department of Justice new procedures for assenting to discharge in student loans in bankruptcy.[55] As part of this work, my coauthors and I have obtained most of the documents in student loan adversary proceedings that were filed after November 2022. Many of the private loan stipulations are of a similar nature: they appear to significantly reduce the outstanding balance and often significantly reduce the interest rate to a fixed amount. So far so good. **The first concern arises because these stipulations to repay private student loan debts may be for loans that are not subject to the special treatment and were already discharged.** In that case, anything the debtor pays is absolutely not required, and the stipulation that they are doing so because bankruptcy law demands it is problematic if the creditor knows or should know that the loans have been discharged.

The second concern is that these settlements purport to prevent the debtor from ever attempting to discharge their student loan debt in the future. When those stipulations are incorporated in a court order, they may arguably meet requirements to make the debt not dischargeable in the future.[56] The most unsettling language, in a National Collegiate Student Loan Trust (NCSLT) stipulation, is very explicit about trying to do just that:

> As of the Effective Date, the Debtor fully, finally, and forever settles, waives, and releases her claim of entitlement to a discharge and/or disallowance of her Loans, and is **forever barred and enjoined from asserting** and [sic] **adversary**

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[51] *See* 11 U.S.C. § 523(a)(8).
[52] *Id. See also* Jason Iuliano, *Student Loan Bankruptcy and the Meaning of Educational Benefit*, 93 AM. BANKR. L.J. 277 (2019) (arguing that courts have misinterpreted the meaning of "educational benefit").
[53] CFPB PHEAA *supra* note 50.
[54] CFPB PHEAA *supra* note 50.
[55] Guidance for Department Attorneys Regarding Student Loan Bankruptcy Litigation, U.S. Dept. of Justice (Nov. 17, 2022), https://web.archive.org/web/20221123082353/https://www.justice.gov/civil/page/file/1552681/download (here after, the "New Guidance"); Belisa Pang, Dalié Jiménez, & Matthew Bruckner, *Full Discharge Ahead? An Empirical First Look at the New Student Loan Discharge Process in Bankruptcy*, 41 EMORY BANKR. DEV. J. __ (2025) (forthcoming).
[56] 11 U.S.C. §§ 727(a)(10), 1328(a). *But see* 11 U.S.C. § 524(c) (reaffirmation of debts must happen before a discharge is entered). The debtor may also be barred from asserting the issue as a matter of collateral estoppel.

> **bankruptcy claim for discharge and/or disallowance of the Loans in any court or forum**.[57]

In this case, the debtor agreed to settle the debt for $15,000 without interest, over 150 months.[58] While $100 per month may seem like a good deal to settle $39,655.82, the complaint in the case had alleged that these were direct-to-consumer loans that were paid directly to the plaintiff-debtor and did not restrict their use. In other words, these might have been *already discharged* loans.[59] Even if they were loans subject to 523(a)(8), it is concerning that a private lender who risk priced their loans at origination would seek to bar a debtor from bankruptcy a second time, should they need to file bankruptcy again.[60]

While the language and circumstances surrounding this stipulation is quite dramatic, there were other cases with less strident language that could have a similar effect. In one case, the married debtors owed several Navient entities (Navient Corporation, Navient, CFC, Navient Solutions, LLC, Navient PC Trust and VL Funding, LLC) on nineteen different loans issued between 2002-2008.[61] In 2022, the outstanding amount was $308,030.12 for all the private loans at the time that proofs of claim were filed in their bankruptcy.[62] In their complaint, plaintiffs stated that these were all direct-to-consumer loans taken out to attend the University of Alabama.[63]

In addition to the 19 private loans over 6 years, the debtors stated that they "received federal financial aid collectively in the approximate amount of $161,510.67."[64] The total cost of attendance for an Alabama resident in the 2007-08 school year was $6,834.[65] Even assuming the previous six years' cost of attendance were as expensive as the last,

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[57] Covington v. The National Collegiate Student Loan Trust 2006-3, Stipulation, Docket No. 2:22-ap-02005 (Bankr. N.D. Ga. Feb 11, 2022), https://perma.cc/X6ZT-GY9B (emphasis added). Although the stipulation is part of the public record in the bankruptcy case, it also contains this language at ¶4:

> the terms and conditions of this Agreement, and the final negotiations regarding this Agreement are strictly confidential and shall not in the future be disclosed, other than to the Parties and their counsel, and the Debtor's close family members and financial advisors … Should the Debtor receive a subpoena in any way relating to the Agreement, the Debtor will notify counsel for NCSLT and Transworld, Michael D. Alltmont, Esq., at: [phone number], and fax a copy of the subpoena to: [fax number].

Id.

[58] *Id.* at ¶ 2.

[59] The agreement also contains this language:

> The Debtor, her heirs, executors and/or administrators represent and agree that they will not individually, or as a member of a class, commence any action or proceeding or solicit class members against either NCSLT, or NCSLT loan servicer Transworld Systems Inc., or make any claim to any agency, federal, state or local regarding the subject matter of this Agreement.

Covington Stipulation, *supra* note 57 at ¶ 5.

[60] The debtor was represented in this case, which ameliorates some of the unfairness concerns. However, there is certainly a significant power imbalance between a recently bankrupt debtor and their attorney and a large private student lender.

[61] Bosch et al v. Navient PC Trust et al, Complaint, No. 7:22-ap-70014 (Bankr. N.D. Ala. Oct 31, 2022), *available here* https://perma.cc/NKQ6-QGDD.

[62] *Id.* at ¶ 17.

[63] *Id.*

[64] *Id.* at ¶ 14-15.

[65] University of Alabama, Undergraduate Cost of Attendance, https://web.archive.org/web/20080508233613/http:/cost.ua.edu/undergraduate-budget07-08.htm (captured May 8, 2008).

the couple's total cost of attendance would have been $164,016, which is roughly the amount of their federal student aid.[66]

In this case and several others, the stipulated judgment allowed the debtor to reduce the total balance due significantly, but again with the uncertainty of whether there was any money due at all. The stipulation language in these other cases is less severe than the one used by NCSLT.[67] It simply has the debtors stipulate that "the Student Loans evidenced by the Promissory Notes are non-dischargeable educational loans, pursuant to 11 U.S.C. § 523(a)(8)."[68]

This stipulation would not prevent debtors from filing bankruptcy again and including their student loans in a potential discharge. However, **after this stipulation has been entered, a later court might find that the debtors who agreed to it are precluded from raising the issue of the nondischargeability of these loans in a future bankruptcy**.[69]

Most of the private student loan stipulations I happen to observe were with a Navient entity. Just last week, the CFPB banned Navient from servicing federal student loans.[70] Navient was also "the top subject of private student loan complaints received by the CFPB" for the year ending August 31, 2023.[71]

2. Time-Barred Debt in Bankruptcy

In 2017, the Supreme Court appeared to the door on using the Fair Debt Collection Practices Act (FDCPA) to prevent an industry in stale claims from polluting the system. The *Midland Funding, LLC v. Johnson* decision held that filing a proof of claim for a time-barred debt in bankruptcy, without more, was not a violation of the FDCPA because Alabama law (where the case was filed) "provides that a creditor has the right to payment of a debt even after the limitations period has expired."[72] In a citation, the court

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[66] $6,834*2 borrowers*6 years*2 semesters per year. This also assumes they each attended for 6 years / 12 semesters, which is unlikely but not something we can determine from the record. Note that the 2002 total cost of attendance was $4,571. Undergraduate Cost to Attend, https://web.archive.org/web/20020403024927/http://cost.ua.edu/undergraduate-budget.html.

[67] For other cases with similar stipulations where there were allegations and evidence on the record that the loan(s) may already be discharged in bankruptcy, see Jones v. Navient - Stipulation, https://perma.cc/7W2M-QVJX and Proof of Claim, https://perma.cc/4KW5-K9R5; Watson v. Navient Stipulation, https://perma.cc/Q3SS-S6MQ.

[68] Bosch et al v. Navient PC Trust et al, Stipulation, No. 7:22-ap-70014 (Bankr. N.D. Ala. Oct 31, 2022), *available here* https://perma.cc/NKQ6-QGDD.

[69] *See* Dowling v. United States, 493 U.S. 342, 347 (1990) (citing *Ashe v. Swenson*, 397 U.S. 436 (1970)) ("when an issue of ultimate fact has once been determined by a valid and final judgment, that issue cannot again be litigated between the same parties in any future lawsuit."). A recent paper found that nearly half of all consumer bankruptcy filings in 2023 "came from people with a prior bankruptcy record." Belisa Pang, The Bankruptcy Revolving Door (Jan. 31, 2024), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4911339.

[70] CFPB Bans Navient from Federal Student Loan Servicing and Orders the Company to Pay $120 Million for Wide-Ranging Student Lending Failures (Sept. 12, 2024), https://www.consumerfinance.gov/about-us/newsroom/cfpb-bans-navient-from-federal-student-loan-servicing-and-orders-the-company-to-pay-120-million-for-wide-ranging-student-lending-failures/.

[71] Consumer Financial Protection Bureau, Report of the CFPB Education Loan Ombudsman (Oct. 2023), https://files.consumerfinance.gov/f/documents/cfpb_annual-education-loan-ombudsman-report_2023.pdf.

[72] Midland Funding, LLC v. Johnson, 581 U.S. 224, 229 (2017).

noted that the law was different in Mississippi[73] and Wisconsin[74] (where the expiration of the statute of limitations extinguishes the right as well as the remedy), although the opinion reads as if it applies nationwide.[75] Today, at least four other states have joined Mississippi and Wisconsin in invalidating at least certain kinds of claims in some circumstances: North Carolina,[76] California,[77] Connecticut,[78] Texas,[79] and New York.[80] More than a third of the population of the United States resides in these states—and *at least there*, it would be an unfair practice for debt buyers to file stale claims in bankruptcy.[81]

I am currently doing data collection for a study on stale proofs of claims in bankruptcy. I've not yet reviewed many claims but have found several that are decidedly past the statute.[82] In one case, the claim was filed in California just outside its four-year limitations period by Jefferson Capital System, LLC, a debt buyer.[83]

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[73] Miss. Code Ann. §15–1–3(1) ("The completion of the period of limitation prescribed to bar any action, shall defeat and extinguish the right as well as the remedy. However, the former legal obligation shall be a sufficient consideration to uphold a new promise based thereon.").

[74] Wis. Stat. § 893.05 ("When the period within which an action may be commenced on a Wisconsin cause of action has expired, the right is extinguished as well as the remedy.") (codifying *Maryland Casualty Company v. Beleznay*, 245 Wis. 390 (1944)).

[75] *See also* Dalié Jiménez, *Ending Perpetual Debts*, 55 HOUS. L. REV. 609 (2018).

[76] N.C. Gen. Stat. 58-70-115(4) (2009) (banning as an unfair practice debt buyers or their agents from "bringing suit or initiating an arbitration proceeding against the debtor or otherwise attempting to collect on a debt when the collection agency knows, or reasonably should know, that such collection is barred by the applicable statute of limitations."). It appears that the Supreme Court did not know about the North Carolina law.

[77] Cal. Civ. Proc. Code § 337 (2019) (When the period in which an action must be commenced under this section has run, a person shall not bring suit or initiate an arbitration or other legal proceeding to collect the debt. The period in which an action may be commenced under this section shall only be extended pursuant to Section 360); CA Civ Code § 1788.5 (2014) ("A debt buyer shall not bring suit or initiate an arbitration or other legal proceeding to collect a consumer debt if the applicable statute of limitations on the debt buyer's claim has expired.").

[78] Conn. Gen. Stat. § 36a-814 ("No creditor or consumer collection agency that purchased debt shall initiate a cause of action to collect the debt owed…").

[79] Texas Finance Code 392.307. "A debt buyer may not, directly or indirectly, commence an action against or initiate arbitration with a consumer to collect a consumer debt after the expiration of the applicable limitations period…" The Texas statute extinguishes the debt for purposes of "an action against" or "arbitration." *Id.*

[80] N.Y. C.P.L.R. 214-i (McKinney) ("Notwithstanding any other provision of law, when the applicable limitations period expires, any subsequent payment toward, written or oral affirmation of or other activity on the debt does not revive or extend the limitations period.").

[81] It appears that the Midland court did not have all the information. Several of these laws had been enacted by then: North Carolina (2009), California (2014 for debt buyers), and Connecticut (2016). Since then, Texas (2019), New York (2021), and California (2019 now including original creditors as well) have been added. While none of these states have the same language about extinguishing the right as well as the remedy, several of them have provisions that would certainly apply in bankruptcy.

[82] Cavalry SPV I, LLC Proof of Claim, https://perma.cc/N9RL-Q5ER (last payment date is blank; charge-off date is 3/13/2002; claim filed: 7/23/20; Florida statute of limitations; 5 years); Atlas Acquisition, LLC, (last payment: 6/30/2016; claim filed: 6/13/2023; Maryland statute of limitations: 3 years).

[83] Jefferson Capital Systems LLC Proof of Claim in California Case, https://perma.cc/M3BF-8S5H (date of last payment 04/21/2020; date of claim: 5/14/2024; applicable statutory period: 4 years). Like many of Jefferson's proofs of claims, it contains the following language: "Based on the information provided in this proof of claim, the claim may be unenforceable because it is outside of the applicable statute of limitations." It also provides an email address of someone to contact for questions and adds: "If you request, we will provide further evidence entitling us to payment on the claim. If you seek to have the claim disallowed on the basis that it is outside the applicable statute of limitations, we will consent to an order disallowing the claim within 10 business days. This process is designed to relieve you of the need to file a formal objection based on the statute of limitations. You are still entitled to file an objection to the claim subject to the Bankruptcy Code and applicable Rules." *Id.*

Unfortunately, it is impossible to know whether private student loan lenders are filing stale claims in bankruptcy by looking at bankruptcy claims alone. Federal Rule of Bankruptcy Procedure 3001(c)(3) requires information about important dates: last transaction, last payment, and charge-off be included in the Proof of Claim but only with regards only to claims "based on an open-end or revolving consumer credit agreement." In reviewing proof of claims in student loan cases, I have yet to see a claim where any of these dates are stated as part of the documents attached.[84] The ideal solution would require a change to the forms themselves, which is well outside the scope of this subcommittee.[85]

Nonetheless, the CFPB can issue an advisory warning covered entities about stale claims in bankruptcy *in states in which they do not have a right to a claim*. The language of Regulation F explicitly carves out "proofs of claim filed in connection with a bankruptcy proceeding," but this cannot square with the law in those states. The Bureau can also request information on the claims private student loan have filed in bankruptcy during supervisory activities. To the extent that they have filed time-barred proofs of claim in states where that is prohibited—especially in states where the claim has been extinguished like Mississippi and Wisconsin or in states like California that prohibit initiating a "suit … arbitration … *or other legal proceeding*" (like filing a proof of claim in bankruptcy)—there should be consequences.[86]

B. Default Judgments in State Court Debt Collection Lawsuits and Failure to Follow Rules and Statutes

Although much of the civil work of state courts is consumed by debt collection lawsuits, detailed data on cases and outcomes has been elusive. The Debt Collection Lab aims to bring some of this information to light by gathering, standardizing, and publishing microdata on state debt collection lawsuits.[87] We obtain data directly from state courts or scrape it from public websites. Our debt collection tracker currently has collection lawsuits filed in six states from 2020-2023, with more forthcoming. As part of our work, we have obtained court documents from states which have required plaintiffs to file additional documentation or information before obtaining a judgment. I would like to discuss what I have found to be rampant disregard of court rules and statute by plaintiffs in Connecticut which appear to include private student loan plaintiffs.

The Debt Collection Lab recently published a series of four reports examining laws that several states enacted in the last decade to protect consumers who are sued in debt

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[84] *See, e.g.,* https://perma.cc/4KW5-K9R5; https://perma.cc/73D3-Z8TR; https://perma.cc/QM46-SCWE.
[85] *See* Advisory Committee on Bankruptcy Rules, Meeting of April 29-30, 2010, New Orleans, LA, https://www.uscourts.gov/sites/default/files/fr_import/BK04-2010-min.pdf.
[86] *See also* Kara J. Bruce & Alexandra P. E. Sickler, *Private Remedies and Access to Justice in a Post-Midland World Symposium*, 34 EMORY BANKR. DEV. J. 365, 382 (2017).
[87] Debt Collection Lab Lawsuit Tracker, https://debtcollectionlab.org/lawsuit-tracker. I am a co-principal investigator at the Lab.

collection.[88] These laws (or sometimes court rules) require plaintiffs to attach testimonial (in the form of an affidavit) or documentary evidence before obtaining a default judgment against a consumer. More than 70% of debt collection lawsuits are resolved by default, so these laws affect a substantial portion of all state court litigation.[89]

While most debt collection lawsuits are filed to collect on credit card debt, private student loan creditors and colleges and universities also file lawsuits in state court.[90] When they do so, they are subject to state court rules and laws. In Connecticut, those rules cover both debt buyers and original issuers of credit.[91] We reviewed 88 randomly selected cases in Connecticut small claims court and found that *none* of the debt buyer plaintiffs had fully complied with applicable rules and statutes before requesting a default judgment.[92] Despite the noncompliance, only one case was dismissed for failure to follow the rules.[93] We estimated that this meant that fewer than 5% of cases filed in Connecticut small claims were likely to fully comply with the rules.[94]

More research is certainly needed, but given this finding, we would expect that a review of private student loan cases in Connecticut, and perhaps other jurisdictions that have

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[88] Abhay Aneja, Luis Faundez, Dalié Jiménez, Claire Johnson Raba, Prasad Krishnamurthy, and Manisha Padi, *Debt Documentation Requirements in State Court and Access to Credit*, THE DEBT COLLECTION LAB, (Sept. 10, 2024), https://debtcollectionlab.org/research/debt-documentation-requirements-in-state-courts-access-to-credit; Abhay Aneja, Julia Byeon, Luis Faundez, Doug A. Lewis, Dalié Jiménez, Claire Johnson Raba, Prasad Krishnamurthy, and Manisha Padi, *More Paper in Texas: An Evaluation of Documentation Reforms in State Court*, THE DEBT COLLECTION LAB (Sept. 6, 2024), https://debtcollectionlab.org/docs/texas-debt-documentation-evaluation.pdf; Abhay Aneja, Julia Byeon, Jacqueline Cope, Luis Faundez, Dalié Jiménez, Claire Johnson Raba, Prasad Krishnamurthy, and Manisha Padi, *More Paper in Connecticut: An Evaluation of Documentation Reforms in State Court*, THE DEBT COLLECTION LAB (Aug. 9, 2024), https://debtcollectionlab.org/docs/connecticut-debt-documentation-evaluation.pdf [*More Paper in Connecticut*]; Abhay Aneja, Julia Byeon, Jacqueline Cope, Luis Faundez, Doug A. Lewis, Dalié Jiménez, Claire Johnson Raba, Prasad Krishnamurthy, and Manisha Padi, M*ore Paper in California: An Evaluation of Documentation Reforms in State Court*, THE DEBT COLLECTION LAB (July 15, 2024), https://debtcollectionlab.org/docs/california-debt-documentation-evaluation.pdf.

[89] Erika Rickard, *How Debt Collectors Are Transforming the Business of State Courts*, Pew Charitable Trusts (May 6, 2020), https://www.pewtrusts.org/en/research-and-analysis/reports/2020/05/how-debt-collectors-are-transforming-the-business-of-state-courts.

[90] Claire Johnson Raba, *Co-Opting California Courts: How Private Creditors Have Turned the Judiciary into a Predatory Student Debt Collection Machine,* STUDENT BORROWER PROTECTION CENTER (Aug. 2021), https://protectborrowers.org/wp-content/uploads/2021/08/Co-Opting-CA-Courts.pdf.

[91] *See* Appendix A, *More Paper in Connecticut, supra* note 88.

[92] Because the majority of debt sold is credit cards, all but one of these plaintiffs were suing about a credit card, and none of these randomly selected cases were suing on a student loan.

[93] *More Paper in Connecticut*, *supra* note 88 at 37.

[94] "Let's suppose, for example, that the rate at which debt buyers complied with all requirements was a paltry 5%. Even in that case, which is a clear example of substantial noncompliance, we would expect to see data this bad only 1% of the time. Consequently, we can conclude that actual compliance is likely worse than 5%." *More Paper in Connecticut*, *supra* note 88 at 37.

similar rules or statutes, would result in finding significant violations that the CFPB could act upon.[95] A quick review in California turned up a potential one.[96]

In preparation for my testimony, I reviewed a handful of superior court cases filed by private student loan creditors.[97] This is not a systematic review by any means. I only use it as an example of issues that may be occurring in state court which the CFPB should review. To begin, **none of the student loan plaintiffs who sought a default judgment fully complied with the relevant rules and statute when they requested a default judgment**.[98] Unfortunately, the court dismissed only one case for a failure to comply.[99] The rest obtained a favorable judgment, either by default or stipulation.

One case was filed by Student Loan Solutions, LLC, on a 2007 Bank of America "Education Maximizer Undergraduate Loan" to attend a for-profit school that offered a 2-year "occupational degree programs in photography and graphic design/ commercial."[100] The affidavit submitted by the debt buyer was deficient in several respects, including because it fails to state that "the documents attached to it are true copies of the originals" as required by Conn. Practice Book 17-25, does not list the address of previous owners of the debt as required by Connecticut General Statute § 36a-813(b) and did not "attach documentation to the affidavit that fully substantiates the amount of the debt" as required by Connecticut General Statute § 36a-813.[101]

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[95] For a list of 13 states that have implemented similar rules, along with citations and the timing of such rules, see *Debt Documentation Requirements in State Courts and Access to Credit* Table 1, *supra* note 49. Note that this list is not exhaustive.

[96] Student Loan Solutions, LLC v. Sanchez, Complaint (Sept. 15, 2021), https://perma.cc/AXY5-HRAF (the complaint si quite confusing, but it appears to split up a student loan payment obligations into "out of stat" and "In Stat (past due)" plus "In Stat (Future Due)" payments when the last payment on the debt appears to be January 22, 2009, or perhaps May 23, 2016, and California has a four-year statute of limitations and statute prohibiting suit thereafter Cal. Civ. Code § 1788.56).

[97] To find private student loan creditors, I searched the captions of cases in small claims and superior court in Connecticut filed between January 1, 2021 and August 31, 2023 for keywords: "navient", "nelnet", "SLM", "mohela", "missouri higher", "educap", "arrowood in", "national collegiate", "student", "hidden oak", "TFC credit", "transact", "education resources", "edfinancial", "touchnet", "Massachusetts Educational", "MEFA", "ECMC", "Sofi L", "college","university", "Sofi Bank", "sallie mae", "higher e", "higher education", "education loan", "Shenandoah funding" The search was not case sensitive. This is an imperfect list, as it fails to find student loans sold to debt buyers that also purchase other types of debts (that can only be discerned from documents, not the caption of the case). Few creditors I could identify as student loan creditors file in small claims—which makes sense given the $5,000 jurisdictional limit—and so I reviewed superior court cases. This search list yielded a maximum of 479 case in 2014, but only a handful in later years (2021: 49, 2022: 37, 2023: 35). It's unclear whether these debts are being sold and cannot be found by the caption of the case, whether the portfolios are aging out of the statute of limitations and the cases are not being brought, or something else.

[98] *More Paper in Connecticut, supra* note 88 at Appendix A (detailing the relevant rules for small claims and superior court).

[99] But see Navient Private Education Loan Trust 2015-A v. Gorden, https://civilinquiry.jud.ct.gov/CaseDetail/PublicCaseDetail.aspx?DocketNo=HHDCV226157686S for a case in which the judge denied the default judgment because "The affidavit of debt neither identifies nor authenticates the accompanying documents." Order Regarding Motion for Default (Jun. 29, 2023), https://civilinquiry.jud.ct.gov/DocumentInquiry/DocumentInquiry.aspx?DocumentNo=25627290.

[100] Antonelli Institute archive at the Wayback Machine, https://web.archive.org/web/20071005031748/http://www.antonelli.edu/ (archived October 5, 2007, last accessed Sept. 12, 2024).

[101] The documents the plaintiff presented fail to explain how they arrived at the due amount of $19,806.66.

Failure to include full information on previous owners of the debt was one of the most common issues in the private student loan cases I reviewed as well as the random sample of cases we reported on.[102] But at least one of the Connecticut student loan plaintiffs also failed to file a certification that the person is not currently a servicemember as required by Connecticut Practice Book 17-21.[103]

# # #

The CFPB has an opportunity to learn both about risks and harms in the private student loan market (and others) by using court data from bankruptcy and state courts. What it learns would be useful to not only to its own understanding of the market, but through research, guidance, and reports, it would improve the public's as well. To facilitate this, **the CFPB should acquire microdata about bankruptcy and debt collection cases across the country, study it, and produce reports about it, just like it has done with credit panel data.[104]**

III. Steps Forward

Students take out private student loans for many reasons: insufficient funds to cover the cost of attendance from federal loans, ineligibility for federal loans, or lower interest rates, among others. In some cases, however, students may not realize they are taking on a loan at all.

Although dwarfed by the size of the Department of Education (ED)-held student loans, Federal Family Education Loan Program (FFELP) loans and private student loans affect millions of borrowers.[105] The large drop in student loan delinquencies reported by the Federal Reserve Bank of New York and others was of course driven mechanically by the COVID student loan payment pause.[106] Borrowers who did not consolidate their Federal Family Education Loan Program (FFELP) loans or who held private student loans did not

[102] *See, e.g.,* Case numbers AANCV206039603S, WWMCV216021129S, HHDCV226157686S, KNLCV216050520S, HHDCV226152146S. Case docket and documents can be found by entering the full docket number on this page: https://civilinquiry.jud.ct.gov/GetDocket.aspx.

[103] Nat'l Collegiate Student Loan Trust 2006-4 v. Bessette, https://civilinquiry.jud.ct.gov/CaseDetail/PublicCaseDetail.aspx?DocketNo=WWMCV216021129S. The case ultimately ended in a stipulated judgment.

[104] For an example of a report using the CFPB's Consumer Credit Panel, see Consumer Financial Protection Bureau, *Data Point: Consumer Credit and the Removal of Medical Collections from Credit Reports* (Apr. 2023), https://files.consumerfinance.gov/f/documents/cfpb_consumer-credit-removal-medical-collections-from-credit-reports_2023-04.pdf.

[105] Jacob Goss, Daniel Mangrum, and Joelle Scally, *Student Loan Repayment during the Pandemic Forbearance*, FRBNY Liberty Street Economics (March 22, 2022), https://libertystreeteconomics.newyorkfed.org/2022/03/student-loan-repayment-during-the-pandemic-forbearance/ [perma.cc/3RZC-FSGK](estimating $133 billion in outstanding FFEL and $95 billion in outstanding private student loans as of March 2022). An industry analytics firm estimates the market as of Q1 2024 at $133.43B. Enterval Analytics, LLC Private Student Loan Semi Annual Report Ending Q1 2024 (Aug. 22, 2024), https://www.enterval.com/media/files/enterval/psl/enterval-private-student-loan-semi-annual-report-march-2024.pdf?v=20240822T183633 [https://perma.cc/6KRB-ZAVH].

[106] Federal Reserve Bank of New York, Quarterly Report on Household Debt and Credit 2024:Q2 (Aug. 2024) at 12, https://www.newyorkfed.org/medialibrary/interactives/householdcredit/data/pdf/HHDC_2024Q2.

benefit from the pause.[107] The other students who did not benefit are those indebted to their educational institutions, either in the form of tuition repayment plans or as institutional debts.[108]

Private student loans can be a stopgap for students, but if our policy goal is to ensure that every person who wants to improve their education can do so without regard to their race, ethnicity, or socioeconomic origin, we cannot rely on them.[109] Given our deeply unequal society, our wealth disparities along race, and our employment power disparities along race and gender, it is all but inevitable that risk-based pricing will lead to disparate effect on some protected group. Although lenders are obligated under fair lending laws to mitigate these disparities, loans and lending practices cannot fix the entrenched history of dispossession and discrimination that many communities have faced.[110]

To genuinely move forward, we must invest directly in education—we must invest in our collective future.[111] While loans (private or federal) might play a supportive role, they cannot be the primary means by which we enable our citizens to access education.

We need free college now.

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[107] During the pandemic payment pause especially, but even today, borrowers with FFELP loans would have benefited immensely from converting their loans to ED-held loans through Direct Loan Consolidation. FFELP lenders should have arguably communicated this to their customers. Kate Mullan, CFPB, *FFELP student loan borrowers: take full advantage of fixes to Income-Driven Repayment* (May 25, 2022), https://www.consumerfinance.gov/about-us/blog/ffelp-student-loan-borrowers-take-full-advantage-of-fixes-to-income-driven-repayment/ (noting that "Commercial FFELP servicers must provide accurate information about the IDR fix"); Student Borrower Protection Center, *Failing to Inform Borrowers About the Looming IDR Account Adjustment Deadline Likely Violates Consumer Protection Law*, https://protectborrowers.org/consumer-protection-agencies-must-ensure-student-loan-companies-inform-borrowers-about-idr-aa/.

[108] Charlie Eaton, Johnathan Glater, Laura Hamilton, and Dalié Jiménez, *Creditor Colleges: Canceling Debts that Surged during COVID-19 for Low-Income Students* (Apr. 1, 2022), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4072193.

[109] Jonathan D. Glater, *Student Debt and the Siren Song of Systemic Risk*, 53 HARV. J. ON LEGIS. 99, 113 (2016) (noting that terms of commercial loans were a reason the federal legislature expanded federal student lending).

[110] Dorothy A. Brown, THE WHITENESS OF WEALTH: HOW THE TAX SYSTEM IMPOVERISHES BLACK AMERICANS—AND HOW WE CAN FIX IT (PENGUIN 2022); Dalié Jiménez and Jonathan D. Glater, *Student Debt is a Civil Rights Issue: The Case for Debt Relief and Higher Education Reform*, 55 Harv. Civ. R. & Civ. Lib. L. J. 131, 137-39 (2020), *available at* https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3475224 [hereinafter *Student Debt is a Civil Rights Issue*]; Meizhu Lui, Bárbara Robles, Betsy Leondar-Wright, Rose Brewer, and Rebecca Adamson, THE COLOR OF WEALTH: THE STORY BEHIND THE U.S. RACIAL WEALTH DIVIDE (THE NEW PRESS 2006); Abbye Atkinson, *Rethinking Credit as Social Provision*, 71 STANFORD L. REV. 1093 (2019).

[111] *Student Debt is a Civil Rights Issue*, *supra* note 110 at 165-178.